

NO. 26493

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CARL DUANE CARLSMITH, Petitioner

vs.

HONORABLE KAREN M. RADIUS, Judge of the Family
Court of the First Circuit, CYNTHIA CARLSMITH-CRESPI,
ANNALIESE CARLSMITH, TIMOTHY LURIA, Guardian Ad Litem,
and JOSEPH L. KRAHULIK, Respondents

ORIGINAL PROCEEDING
(FC-G NO. 03-1-0350)

ORDER DENYING PETITION FOR WRIT OF PROHIBITION
OR, IN THE ALTERNATIVE, FOR WRIT OF MANDAMUS,
DIRECTED TO THE HONORABLE KAREN M. RADIUS,
FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAII
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of Petitioner Carl Duane Carlsmith's
petition for a writ of prohibition, or in the alternative, for a
writ of mandamus, directed to the Honorable Karen M. Radius,
Judge of the Family Court of the First Circuit, the papers in
support, and the records and files herein,

1. Petitioner Carl Duane Carlsmith seeks review of orders
entered in In the Matter of the Guardianship of Edith M.
Carlsmith, FC-G No. 03-1-0350, presently pending in the Family
Court of the First Circuit.

2. A writ of mandamus and/or prohibition is an
extraordinary remedy that will not issue unless the petitioner
demonstrates a clear and indisputable right to relief and a lack
of other means to adequately redress the alleged wrong or obtain
the requested action. State v. Hamili, 87 Hawai'i 102, 104, 952
P.2d 390, 392 (1998) (citing Straub Clinic & Hospital v. Kochi,
81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996)).

3. Such writs are not meant to supersede the legal discretionary authority of the lower courts, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. Id.

4. Where a trial judge has discretion to act, mandamus clearly will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject that is properly before the court under circumstances in which it has a legal duty to act. Id.

5. Petitioner Carl Duane Carlsmith fails to demonstrate that he is entitled to a writ of prohibition or a writ of mandamus. Therefore,

IT IS HEREBY ORDERED that the petition for a writ of prohibition and/or mandamus is denied without prejudice to Petitioner Carl Duane Carlsmith presenting any arguments in the pending family court case and without prejudice to any eventual remedy Petitioner may have by way of appeal.

DATED: Honolulu, Hawai'i, August 27, 2004.

Stuart M. Cowan for
petitioner on the writ